IN THE

Supreme Court of the United States

October Term, 1947.

No. 2

MRS. ABA BADGER SUTTLE, Widow of JOHN G. SUTTLE, individually and as administratrix of the Estate of JOHN G. SUTTLE, Deceased, Etc.,
Petitioner,

versus

REICH BROS. CONSTRUCTION CO. ET AL,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

JOHN D. MILLER,
HENRY G. BLOCH,
JOHN R. ANDERSON,
W. A. BLAIR,
C. F. ENGLE,
S. B. LAUB,
R. BRENT FORMAN,
LAWRENCE ADAMS,
Attorneys for Petitioner.

Of Counsel for Petitioner.

HAUSER PRINTING CO., INC.

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May It Please the Court:

Mrs. Aba Badger Suttle respectfully presents this, her Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Fifth Circuit, together with Brief in Support of Petition to the Honorable Circuit Court of Appeals of the United States for the 5th Cir- Circuit at New Orleans, La., in the case of Mrs. Aba Badger Suttle, widow of John G. Suttle, individually and as Administratrix of the Estate of John G. Suttle, deceased, etc., versus Reich Bros. Construction Company et al, #11849, heretofore decided by the said Honorable 5th Circuit Court of Appeals on April 30, 1947, and in which Appellant's Motion for Rehearing was overruled without a written opinion, May 31, 1947, and respectfully shows:

SUMMARY STATEMENT OF MATTERS INVOLVED

Mrs. Aba Badger Suttle, widow of John G. Suttle, individually and as Administratrix of the Estate of John G. Suttle, deceased, etc., a citizen and resident of the State of Mississippi brought this suit in Federal District Court of the Eastern District of Louisiana, against Reich Bros. Construction Company and the individual members thereof, citizens of Louisiana and residents of the Western District of Louisiana, and the insurer of Reich Bros. Construction Company, the Highway Insurance Underwriters, a Texas corporation, authorized and qualified to do business in Louisiana, whose agent for service of process resides in the Eastern District of La., seeking judgment for alleged death, personal injury and property damage resulting from an automobile accident, which occurred on December 10, 1945, in the Eastern District of Louisiana. The Reich Bros. Construction Company and the individual members thereof and also the Highway Insurance Underwriters filed Motions to Dismiss the Plaintiff's complaint on the grounds of improper venue. Upon the hearing of said Motions, the U. S. District Court dismissed the motion of the Highway Insurance Underwriters, holding that, under the Consent Doctrine established in the case of *Neirbo Co. vs. Bethlehem Ship-building Corporation*, 308 U.S. 165; 60 Supreme Court 153; 84 Lawyers' Edition 167; the Highway Insurance Underwriters was properly brought into Court in the Eastern District of Louisiana and might equally as well have been brought into Court in the Western District of Louisiana. But the District Court upheld the Motion of the Reich Bros. Construction Company and the individual members thereof, and dismissed the Plaintiff's suit as to them, holding that these Defendants had a right to insist on being sued in the

district of their residence unless their co-defendant was a resident of the other district of the State and that the co-defendant, the Highway Insurance Underwriters was not a resident of the other district of the State; therefore, that the Reich Bros. Construction Company and the individual members thereof could be sued only in the district of their residence. An appeal was taken from this judgment to the U. S. Circuit Court of Appeals for the 5th Circuit and the said Circuit Court of Appeals affirmed said judgment, in an opinion reported in 161 F. 2d. 289, holding that the Highway Insurance Underwriters was not a resident of the Eastern District of Louisiana and, therefore, that the Reich Bros. Construction Company and the individual members thereof had a right to object to being sued outside of the district of their residence.

Petitioners then presented a Petition for Rehearing to the Circuit Court of Appeals. Same was denied without written opinion.

Petitioner therefore presents this, her Petition for Writ of Certiorari, seeking to have such erroneous judgment reviewed and the judgment of the said Circuit Court of Appeals in said case reviewed by this Honorable Court, and to have such other or further remedy or relief in the premises as to this Honorable Court might seem appropriate.

JURISDICTIONAL STATEMENT

The jurisdiction of this Honorable Court is invoked under Section 240 of the Judicial Code, as amended, 28 U.S.C.A., Sections 347 and 350, and Supreme Court Rule #38.

QUESTIONS PRESENTED

It is conceded in this case that the Highway Insurance Underwriters is properly brought into Court in the Eastern District of Louisiana. The sole question presented by the case, therefore, is whether, under Section 113 of Title 28, U.S.C.A., the Reich Bros. Construction Company and the individual members thereof, who are residents of the Western District of Louisiana, can properly be brought into Court in the Eastern District of Louisiana, because of the fact that their co-defendant is properly suable in that district and is a resident thereof.

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI

(1) The Honorable Circuit Court of Appeals for the 5th Circuit has rendered a decision which is in conflict with other decisions of the Circuit Courts of Appeals on the same matter and which is in conflict with decisions of this Honorable Court by holding that "citizenship", as required for jurisdictional purposes in the Federal Courts, is synonymous with "residence", as required for venue purposes in the Federal Courts, the principal ground upon which the judgment of the 5th Circuit Court of Appeals was based in this case being that, if the corporation-defendant was declared a resident for venue purposes, then it would thereby be a citizen for jurisdictional purposes.

(2) The Honorable Circuit Court of Appeals for the 5th Circuit has decided an important question of local law in a way clearly in conflict with applicable local decisions by holding that the corporation-defendant in this case is a non-resident of the State of Louisiana,

whereas the laws and jurisprudence of the State of Louisiana make said corporation a resident of that State, the question as to whether or not a party is a resident of a state being a question to be determined by the law of the state.

(3) The Honorable Circuit Court of Appeals for the 5th Circuit has decided an important question of Federal law which has not been but should be settled in this Court, in holding that under Section 113 of Title 28, U.S.C.A., a defendant, citizen and resident of one Federal District of the State cannot be sued in another Federal District of the State where a co-defendant is properly suable.

(4) The Honorable Circuit Court of Appeals for the 5th Circuit has decided a Federal question in a way probably in conflict with the applicable decisions of this Court in holding that the partnership-defendant and the members thereof were not properly suable outside of the district of their residence, and refusing to consider the question of an implied waiver or consent by said defendants to be sued outside of the district of their residence.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the Seal of this Court, directed to the U. S. Circuit Court of Appeals for the 5th Circuit in New Orleans, Louisiana, commanding said Court to certify and send to this Court on a day to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein, entitled *Mrs. Aba Badger Suttle, Widow of John G. Suttle, individually and as Administratrix of the Estate of John G. Suttle, Deceased, etc. Versus Reich Bros.*

Construction Company et al, being #11849, to the end that the decision of the said Honorable 5th Circuit Court of Appeals may be reviewed, revised, and the errors therein corrected and that, upon hearing of said Cause by this Court, the judgment of the said Honorable 5th Circuit Court of Appeals be reversed, or that such other proceedings be had herein as may be provided by law. Your Petitioner will ever pray.

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